

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOAN SCHWAN, et al.,)	4:04CV3384
)	
Plaintiffs,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
CNH AMERICA, LLC, et al.,)	
)	
Defendants)	

The following motions are now pending in this matter:

- Filing 17 Motion to dismiss filed by the defendants CNH America LLC, Fiatallis North America, Inc., Case New Holland, Inc., and CNH Global, N.V.
- Filing 18 Motion to dismiss filed by the defendant Ford Motor Company.
- Filing 20 Motion to dismiss filed by the defendant Unisys Corporation.
- Filing 31 Plaintiffs' motion for leave to amend original complaint.
- Filing 32 Plaintiffs' motion for enlargement of time to respond to Defendants' motions to dismiss.

Under federal practice, “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . .” Fed. R. Civ. P. 15(a). A motion to dismiss is not a “responsive pleading” for purposes of this rule. Winfrey v. Brewer, 570 F.2d 761, 764 n. 4 (8th Cir. 1979). See also Fed. R. Civ. P. 7(a). Because no “responsive pleading” has been filed by any of the defendants in this matter, Plaintiffs were not required to seek leave of court before filing their

amended complaint, which was accomplished (perhaps inadvertently) on April 20, 2005. Plaintiffs' amended complaint (filing 29) is signed by counsel and contains a certificate of service. It thus satisfies the procedural requirements of Rules 5 and 11 of the Federal Rules of Civil Procedure.

Also, the mere act of filing a motion to amend or seeking leave to amend does not negate the otherwise applicable "as a matter of course" language of Rule 15(a). See Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002). "In other words, seeking leave to amend does not, by itself, invoke the district court's discretionary authority to deny leave if the amendment would otherwise fall within the purview of the first sentence of Rule 15(a)." Id.

Although not strictly necessary, I will grant Plaintiffs' motion for leave to amend instanter. Pursuant to Plaintiffs' proposal as set forth in filing 32, Defendants shall have until May 20, 2005, to respond to the amended complaint (filing 29).

The filing of the amended complaint moots each of the pending motions to dismiss the original complaint, and those motions will be denied without prejudice. Plaintiffs' motion for enlargement of time is also mooted with the denial of the motions to dismiss.

Accordingly,

IT IS ORDERED that:

1. Plaintiff's motion for leave to amend (filing 31) is granted instanter.
2. Defendants shall have until May 20, 2005, to respond to Plaintiffs' amended complaint (filing 29).

3. The motion to dismiss filed by the defendants CNH America LLC, Fiatallis North America, Inc., Case New Holland, Inc., and CNH Global, N.V. (filing 17) is denied without prejudice, as moot.
4. The motion to dismiss filed by the defendant Ford Motor Company (filing 18) is denied without prejudice, as moot.
5. The motion to dismiss filed by the defendant Unisys Corporation (filing 20) is denied without prejudice, as moot.
6. Plaintiffs' motion for enlargement of time (filing 32) is denied, as moot.

DATED: April 21, 2005.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge